

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 9, 2001 Session

PAMELA THOMAS v. MURRAY, INC.

**Direct Appeal from the Circuit Court for Carroll County
No. 3904 Julian P. Guinn, Judge**

No. W2000-01280-WC-R3-CV - Mailed April 4, 2001; Filed June 5, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer insists the award of permanent partial disability benefits based on 30 percent to the right arm and 15 percent to the left arm is excessive and should be reduced to one based on 10 percent to the right arm and 5 percent to the left. As discussed below, the panel has concluded the award of permanent partial benefits should be modified to one based on its functional equivalent, 22.5 percent to both arms, and affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court
Affirmed.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and W. MICHAEL MALOAN, SP. J., joined.

J. Arthur Crews and B. Duane Willis, Waldrop & Hall, Jackson, Tennessee, for the appellant Murray, Inc.

George L. Morrison, III, Jackson, Tennessee, and Mary Dee Allen, Cookeville, Tennessee, for the appellee, Pamela Thomas.

MEMORANDUM OPINION

The employee or claimant, Pamela Thomas is thirty-five years old with a high school education and experience as a shoe packer, weld checker, furniture upholsterer, cashier, bookkeeper, stock person and jig welder. She has worked for the employer, Murray, Inc. since 1993 as an assembler. She gradually developed pain, numbness and tingling in both hands and arms at work and was referred to Dr. Claiborne Christian, an orthopedic surgeon in Huntingdon, who diagnosed

bilateral carpal tunnel syndrome and performed right, but not left, corrective surgery. The surgery was partially successful in that it relieved the numbness. She has returned to work with pain and swelling. Dr. Christian estimated the claimant's permanent impairment at 3 percent on the right arm, none on the left.

She was referred to Dr. Kenneth Moore for a second opinion. Dr. Moore estimated her permanent impairment at 5 percent on the right. She continues to work with pain because she has to support her family. She testified that she has great difficulty driving and drying her hair and that she drops things. The discomfort wakes her up at night. Her supervisor vouched for her credibility. The trial judge expressly found her to be a credible witness.

She was examined and evaluated by Dr. Joseph Boals, who estimated her permanent impairment at 10 percent on the right and 5 percent on the left. Dr. Boals recommended that she avoid repetitive or heavy gripping, lifting or carrying any weight, temperature extremes, humidity and vibration. All of the medical experts used AMA guidelines in estimating the claimant's medical impairment.

Upon the above summarized evidence, the trial court awarded permanent partial disability benefits based on 30 percent to the right arm and 15 percent to the left arm. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The panel is not bound by the trial court's findings but conducts an independent examination of the evidence to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. Sp. Workers Comp. 1995). Extent of vocational disability is a question of fact. See Collins v. Howmet Corp., 970 S.W.2d 941 (Tenn. 1998). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. See Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Orman v. Sonoma, Inc., 803 S.W.2d 672, 676-77 (Tenn. 1991).

The appellant contends the award is excessive because different results have been reached in similar cases. The argument is correct but does not squarely address the question before this panel of whether the preponderance of the evidence in this case is other than as found by the trial court. Moreover, the cases cited do not restrict the award to one based on medical impairment ratings. "Disability" and "impairment" have different meanings in the context of the Workers' Compensation Act. Impairment refers to medical and clinical limitations; and disability refers to lost capacity to earn money. Tenn. Code Ann. § 50-6-207(3)(F); Parks v. Tennessee Municipal League Risk Management Pool, 974 S.W.2d 677, 680 (Tenn. 1998). Once the causation and permanency of an injury have been established by expert testimony, the trial judge may consider many pertinent factors, including age, job skills, education, training, duration of disability, and job opportunities for the disabled, in addition to anatomic impairment, for the purpose of evaluating the extent of a claimant's

permanent disability. See McCaleb v. Saturn Corp., 910 S.W.2d 412 (Tenn. 1995). The opinion of a qualified expert with respect to a claimant's clinical or physical impairment is a factor which the court will consider along with all other relevant facts and circumstances, but it is for the court to determine the percentage of the claimant's industrial disability. See Federated Mut. Imp. and Hardware Ins. Co. v. Cameron, 220 Tenn. 636, 422 S.W.2d 427 (1967).

From our independent examination of the record, we do not find the preponderance of the evidence to be other than as found by the trial court. The award is modified to one based on 22.5 percent to both arms.¹ The judgment of the Circuit Court for Carroll County is accordingly affirmed. Costs are taxed to the appellant.

JOE C. LOSER, JR.

¹ Where a worker's only injury is to a scheduled member, he may receive only the amount of compensation provided by the schedule for his permanent disability. Genesco, Inc. v. Creamer, 584 S.W.2d 191, 193-94 (Tenn. 1979). Such injuries are exclusively controlled by the statutory schedule. McIlvain v. Russell Stover Candies, Inc., 996 S.W.2d 179, 185 (Tenn. 1999). An injury to two arms is a scheduled injury. Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w).

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, Murray, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM